

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 982 OF 2005

WITH

CIVIL APPLICATION NO. 1157 OF 2005

Ganpatsinh Chhitusinh Chauhan

....Appellant

Versus

Natwarsinh Ramsinh Chauhan

...Respondent

Ms. Bhavna Shah for the Appellant.

Mr. R.C. Shah for the Respondent.

CORAM: DR. D.Y. CHANDRACHUD, J.

DATE: DECEMBER 21, 2005.

P.C.

Admit. Counsel appearing on behalf of the Respondent waives service. By consent, taken up for hearing and final disposal.

2. The Appellant is the Original Plaintiff in Special Civil Suit No. 2 of 2004 instituted before the Civil Judge, Senior Division, Dadra and Nagar Haveli at Silvassa, for a declaration that the sale deed dated 18th February, 1999, in respect of Industrial N.A. Land bearing Survey No. 152/1/2 admeasuring 26 Ares situated at Village Athal in the Union Territory of Dadra and Nagar Haveli is without consideration and hence does not create any title in favour of the Defendant. Similar relief has been sought in respect of a sale deed dated 18th February, 1999 in respect of N.A. Land bearing

Survey No. 269/4 admeasuring 55 Ares.

3. The case of the Appellant is that the Respondent was the Sarpanch of the Village Panchayat and that he had informed the Appellant that he would obtain N.A. Permission in respect of the aforesaid land in the Union Territory of Dadar and Hagar Haveli. The Respondent thereafter obtained such permission. The Respondent is alleged to have represented that it would be easier to obtain customers for the lands if they were shown in his name. Relying on the aforesaid assurance, two sale deeds were entered into in February, 1999. However, the categoric case of the Appellant is that save and except for an amount of Rs.95,000/-, no further payment was made. The first sale deed dated 18th February, 1999 is in respect of Survey No. 269/4 admeasuring 55 Ares and the total sale consideration is Rs. 4,12,500/-. The amount is stated to have been paid by a cheque and the receipt annexed to the sale deed refers to the number of cheque and to the drawee Bank being Gujarat Industrial Co-operative Bank Limited, Silvassa. The date of the cheque is kept blank. The second sale deed is in respect of Survey No. 152/1/2 admeasuring 26 Ares and the sale price is Rs.2,00,000/-. Again the date of the cheque is kept blank. In paragraph 6 of the plaint, it has been specifically averred that no cheque was ever presented by the Respondent to the Appellant; that none of the cheques was ever deposited in the Bank account of the appellant and that the Appellant had not received any consideration for the two sale deeds save

and except for an amount of Rs.95,000/-. In the written statement, in paragraph 14, the contents of paragraph 6 of the plaint have been dealt with. There is no specific denial of the averments that no payment by cheque was ever made to the Appellant and that the cheques were never banked in the account of the Appellant. On the contrary, the case of the Respondent is that the acceptance of an amount of Rs.95,000/- would show that the entire amount has been paid in cash.

4. The Learned Trial Judge has, in the course of his order, taken note of the fact that there were certain receipts that were produced before the Court. These receipts are dated 15th May, 1998, 12th December, 1998, 29th January, 1999 and 17th April, 1999. All these receipts, save and except for the last, are prior to the date of the two agreements. According to the Appellant, these receipts are fabricated. However, it is material to note that notwithstanding these receipts, the two agreements that were entered into with the Appellants subsequently recite the payment of consideration by cheque. Now, admittedly the position before this Court of the Respondent is that no payment was made by cheque. In the circumstances, the contention that the entire consideration as provided for in the agreement did not flow from the Respondent to the Appellant cannot be rejected out of hand. The Appellant has a *prima facie* case at this stage. One of the two plots of land viz. Survey No. 152/1/2 has already been alienated, while Survey No. 269/4 continues to be in the ownership of the Respondent.

In these circumstances, the balance of convenience would be in favour of this Court passing an order injuncting the Respondent from creating any third party interest or from parting with the possession of the aforesaid plot of land.

5. In the circumstances, the impugned order of the Learned Trial Judge dated 23rd September, 2005 shall stand quashed and set aside. The Respondent, pending the disposal of the suit, is injuncted from creating any third party in respect of Survey No. 269/4 or from parting with the possession thereof or from carrying out any developmental activity thereon. The hearing of the suit is expedited and the learned Civil Judge, Senior Division, Dadra and Nagar Haveli, Silvassa, is requested to make an endeavour to dispose of the suit preferably on or before 31st December, 2006. It is needless to add that all the observations contained in the present order are confined to a *prima facie* appraisal of the matter for determining the application for interim relief and these observations shall not come in the way of the final disposal of the suit. The Appeal is allowed in these terms. There shall be no order as to costs.

6. In view of the disposal of the Appeal, Civil Application does not survive and is accordingly disposed of.